

## **Complaint**

Mr P is unhappy that Moneybarn No. 1 Limited cancelled the payment arrangement they'd agreed.

## **Background**

In October 2016 Mr P took out a conditional sale agreement with Moneybarn to cover the cost of a used car. The agreement was for 60 months, with a monthly repayment of £364. In January 2019 he agreed a payment plan to clear the arrears on the account. He agreed to pay Moneybarn £36 a month starting on 1 February 2019, in addition to his normal agreed monthly payments.

In February 2019 he received a letter from them advising he was in arrears. He said he immediately informed them he'd made the payment of £400 on 1 February 2019. He said he'd made it online with his debit card.

He says on 15th February 2019 Moneybarn chased him again for payment even though he'd paid on time. He says they also sent him a letter threatening a default notice on the same day. He said Moneybarn later admitted the payment plan had failed unnecessarily.

He said they told him they might not be willing to enter into any further payment plans. He feels this was unfair as he'd made the agreed payment and the business had cancelled the agreement without reason.

He agreed a new payment plan on 12 March 2021, and he said he was told the default notice had been taken off the system. He said he was told he could phone in every month if he didn't want to pay by direct debit.

He said he made a further payment of £400 on 31 March 2019 as had been agreed. He said on 10 April 2019 he received another email from Moneybarn saying they hadn't received any payment, and a letter threatening to issue a default notice within 7 days.

He said Moneybarn told him they cancelled the January 2019 payment plan because he didn't call in after making the payment. He said this didn't make sense as they'd already told him in writing that there had been no reason for the payment plan to be cancelled. He said they sent him another default notice even though he hadn't missed a payment.

He said Moneybarn agreed to reset the arrangement on 29 April 2019. He said he was told it wasn't necessary for him to pay by direct debit. He said he was told to pay on the due date and not beforehand as the payment would not be recognised by the system. This was the opposite of what he'd been told previously by Moneybarn.

He said he did not want to make the payments by direct debit. He said he preferred to pay online by debit card, as he had always done. He said the payment plan document clearly stated a direct debit was not necessary. He said Moneybarn told him they wouldn't agree a new payment plan without a direct debit being in place.

Mr P feels he's lost out because the original plan was for £400 per month for the foreseeable future. When the next plan was arranged in April 2019, this was only for 3 months at which time Moneybarn told him they'd review it, and he'd need to pay more each month. He says he needs to pay more only because Moneybarn unnecessarily cancelled the January plan.

Moneybarn said they'd cancelled the payment plan because Mr P hadn't contacted them on 1 February 2019 to set up a new direct debit instruction. They said they'd agreed a payment plan of £36 starting on 1 February 2019, and they'd moved Mr P's normal monthly instalment payment date to coincide with the new payment date. They said they'd allowed the first payment to be made manually, and told Mr P to contact them on 1 February 2019 to set up his direct debit.

They said they received a payment on 1 February 2019 as agreed, but because Mr P did not contact them to set up the direct debit, they cancelled the payment plan and a confirmation letter was sent to him.

They acknowledged he'd continued to make the agreed payments but told him he need to set up a direct debit to keep the plan in place.

Moneybarn said they'd been supportive since Mr P told them he was experiencing financial difficulty.

Our investigator felt Moneybarn had acted fairly. He said when they agreed the payment plan in January 2019, they'd confirmed they'd accept the first payment by card, and subsequent payments would need to be made by direct debit. He felt Moneybarn had cancelled the payment plan because the direct debit hadn't been set up. He agreed that Moneybarn had sent a default notice to Mr P when they shouldn't have, because he'd made the payment – but he didn't think this had a detrimental effect on Mr P.

Mr P disagreed. He said Moneybarn told him the plan was cancelled because he hadn't made the payment, and this was wrong. He said he'd been told in writing that the plan shouldn't have been cancelled. He was also unhappy that another default notice had been issued and this hadn't been addressed. He said that his complaint should be upheld as Moneybarn have admitted in writing that the plan shouldn't have been cancelled.

I issued a provisional decision on 16 February 2021 explaining why I intended to uphold the complaint. I said:

*Cancellation of the payment plan*

*On 14 January 2019 Moneybarn wrote to Mr P to confirm the payment plan arrangement. It showed the first payment was to be made by debit card on 1 February 2019, with subsequent payments from 1 March 2019 to 1 July 2019 by direct debit.*

*The letter thanked Mr P for agreeing to make the payments by direct debit. It went on to say that "If we don't receive your payment(s), or you pay us late and you haven't warned us, we will cancel the payment plan".*

*It doesn't say the payment plan would be cancelled if he failed to set up the direct debit.*

*In their letter of 8 February 2019, they informed Mr P that his payment plan was cancelled. They said this was because they hadn't "received or been able to collect the latest payment that was due". But we know that Mr P made the agreed payment by debit card.*

*On 21 February 2021, and on 25 February 2019, Moneybarn emailed Mr P following calls he'd made to them. They confirmed the payment had been made and said they couldn't see why the payment plan had failed.*

*They asked Mr P to complete the direct debit mandate so they could set up the payment plan again. They also set out what needed to happen if Mr P wanted to keep the payment plan in place. They told him he could make the arrears payments manually by debit card, but the normal monthly payment must be made by direct debit as set out in the original agreement. They told him they'd accept the next payment by debit card, because they were close to the payment due date.*

*They explained he'd need to complete the direct debit mandate, and invited him to confirm if he wanted to add the arrears amount to the direct debit, or continue to make this manually.*

*This is confirmed in Moneybarn's response to his complaint. In this letter they acknowledged that Mr P had continued to make the payments manually. They also warned Mr P that his "agreement remains at risk without a Direct Debit and set payment plan in place".*

*I can see from their correspondence that Moneybarn's preferred method of payment is by direct debit. I can understand why – they've made efforts to agree an affordable payment plan with Mr P, and a direct debit reduces their risk that a payment might be missed. But Mr P's told them he wanted to continue to pay by debit card.*

*I can see nothing in the correspondence that says payment must be made by direct debit. The original agreement says that payment must be made by direct debit, but it also says they can accept payment by another method "at our absolute discretion". I'm persuaded that the payment plan arrangement over rides this term. The important thing here is that Mr P was in financial difficulty, an affordable payment plan was agreed, and Mr P continued to make the payments as agreed.*

*On 2 March 2019 Mr P received another letter from Moneybarn saying the arrears had increased "or we'll need to send you a default notice". This was despite him making a payment by card on 1 March 2019 as arranged with Moneybarn.*

*Another payment plan was confirmed on 12 March 2019. But this was only for the payment on 1 April 2019, and again it was agreed he could pay by debit card. This letter explained the different ways payment could be made. They said payment by direct debit was the preferred method for Moneybarn. But in this letter, they acknowledged Mr P's preference was to pay by debit card, and they explained the easiest way to do this.*

*He made a payment, by card, on 1 April 2019. But on 10 April 2019 he again received a message from Moneybarn saying they hadn't received his payment. They said if he didn't contact them within 7 days, they'd issue a default notice. They would then require him to pay the full arrears, or they'd end the agreement and arrange recovery of the vehicle.*

*Mr P replied saying he had made the payment, and would make the next payment on 1 May 2019, by card, and do the same each month after.*

*He then received a default notice dated 23 April 2019 saying he'd breached the agreement.*

*This notice said the agreement had been breached because Mr P hadn't complied with clause 2.6. This is the clause I've referred to above, which states all payments must be made by direct debit.*

*I don't consider it was reasonable for Moneybarn to issue the default notice. Mr P had continued to make the agreed payments, albeit by debit card. I wouldn't expect a lender to need to issue a default notice only because the customer chooses to pay by a different method.*

*I can see that Moneybarn has taken appropriate steps to help Mr P. His account has been in arrears for a considerable time, and it has recognised his financial difficulties, and shown appropriate forbearance and consideration. As a lender it is entitled to take proportionate action when a consumer is in arrears.*

*But their correspondence with Mr P has been contradictory. The agreement says payment should be made by direct debit, but they've told him on several occasions they're willing to accept payment by debit card. And, on these occasions, Mr P paid the amount agreed in the payment plan, on time. They've even gone as far to explain how to make the payments by card.*

*So I'm satisfied he didn't break the January 2019 payment plan, and it wasn't fair or reasonable for Moneybarn to cancel it. And I'm not satisfied that it was fair to issue a default notice only on the basis of the payments not being made by direct debit. I also find the correspondence sent to Mr P about missed payments shouldn't have been issued.*

*I understand why Moneybarn would prefer to receive payments from Mr P by direct debit, as it reduces the likelihood of future payments being missed. But on this occasion, he made the agreed payments on time.*

*So I'm upholding this part of the complaint.*

*I'm not commenting on the call waiting times, or Mr P's suggestion Moneybarn should implement a call waiting duration message. It's not for me to comment on the processes a business implements.*

*I'm not requiring Moneybarn accept Mr P's suggestion that he doesn't have to pay by direct debit. He hasn't said why he's unable to do this, and Moneybarn hasn't said why they require it. I invite both parties to submit their comments on this matter. But I'm unlikely to insist that Moneybarn must or must not do something if it doesn't fit with their commercial processes. Only the industry regulator can impose such conditions on a business.*

*Putting things right*

*I've said the default notices issued between January 2019 and April 2019 shouldn't have been issued. Moneybarn should ensure that any recording of these be removed from Mr P's credit file, and refund any charges they imposed for the issue of these notices, if they haven't already done so.*

*I'm not asking Moneybarn to reinstate the January 2019 payment plan. Each payment plan is based on an appropriate check of Mr P's financial situation at the time, so it's important that the payment plan is based on the most recent assessment of Income and Expenditure,*

*not what may or may not have happened if the plan hadn't been cancelled – whatever the reasons for the cancellation.*

*Moneybarn should pay £250 to Mr P for the upset they caused by issuing correspondence and default notices when he'd made the payments, and they'd already acknowledged payment. They may offset this amount against the outstanding arrears.*

*I'm not going to insist Moneybarn issue an apology to Mr P. Such an apology is likely to be insincere. It is up to Moneybarn to decide whether or not they wish to offer a genuine apology.*

## **Responses**

Mr P accepted my provisional findings.

Moneybarn expressed their disappointment with my decision to uphold but said they were happy to credit the suggested £250.00 to Mr P's agreement.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Because both parties have accepted my provisional decision, and because no further evidence has been submitted that changes my mind, I'm adopting my provisional findings as my final decision.

## **Putting things right**

For the reasons I've explained, and as I set out in my provisional decision, Moneybarn No. 1 Limited should:

- Remove the record of the default notices issued between January 2019 and April 2019 from Mr P's credit file, and refund any charges they imposed for the issue of these notices, if they haven't already done so.
- Pay £250 to Mr P for the upset they caused by issuing correspondence and default notices when he'd made the payments, and they'd already acknowledged payment. They may offset this amount against the outstanding arrears.

**My final decision**

For the reasons given above I uphold Mr P's complaint. Moneybarn No. 1 Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 April 2021.

Gordon Ramsay  
**Ombudsman**